

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

REAL VIEW, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	
20-20 TECHNOLOGIES, INC.,)	
)	
Defendant.)	
)	
20-20 TECHNOLOGIES, INC.,)	
)	
Counterclaim Plaintiff,)	CIVIL ACTION NO. 07-12157
)	
v.)	
)	
REAL VIEW, LLC)	
)	
Counterclaim Defendant, and)	
)	
BORIS ZELDIN AND LEONID PERLOV)	
)	
Additional Party Defendants)	
in Counterclaim.)	
)	

**AFFIDAVIT OF BORIS ZELDIN IN SUPPORT OF REAL VIEW, LLC'S
MOTION FOR SUMMARY JUDGMENT**

I, Boris Zeldin, state as follows:

1. I am a founder, co-owner and the Vice President of Development of Real View, LLC ("Real View"). I received a five-year degree (roughly equivalent to a Masters of Science degree in the United States) in Civil Engineering from Moscow Civil Engineering University in

1988. As part of my course of studies to earn my Masters' degree I presented a Masters Thesis on the subject of computer aided design ("CAD") in civil engineering.

2. I earned a Ph.D in Civil Engineering from Rice University in Houston, Texas, in 1996. My education in CAD continued while I was earning that degree. I completed my Ph.D thesis and 2 years of post- graduate studies in the area of application of artificial intelligence and CAD technologies in structural and mechanical systems.

3. My work in CAD technologies and its applications in Civil Engineering continued after I earned the M,Sc. degree. From 1988 to 1990 I was involved in working with CAD technologies in connection with the design of earthquake resistant buildings. I was involved in several design projects and developed new enhancements in a CAD system used for building designs in Russia.

4. My experience with CAD further includes a position at Parametric Technology Corporation (PTC), in Waltham, Massachusetts. From 1998 to 2000 I led several projects on adding new functionalities to various components of PTC's ProEngineer software, a market leader of CAD software at that time.

5. I have also studied and worked with Autodesk's Autocad program (a CAD software program widely in use throughout the world) and Revit, an architectural design software product purchased from Revit Technology Corporation by Autodesk in 2002 and now maintained and further developed by Autodesk.

6. I maintain familiarity with, many of the leading computer aided design programs for interior design applications in general, and kitchen design, in particular. I have studied and familiarized myself with a number of these products, including 20-20 Design, Planit, Configura, Chief Architect, Interior Home Designer and others.

7. Real View is a small software start-up company owned by Leo Perlov and myself. The company was founded in 1999. Real View develops, markets, and licenses a kitchen design software product called ProKitchen. Real View has released three versions of ProKitchen: version 1.0 in early 2006; version 2.0 in January 2007 and version 3.0 in January and February 2008.

8. ProKitchen is used by kitchen design consultants and kitchen vendors to perform kitchen design. ProKitchen allows users to create a graphical depiction of how their kitchens will look when completed. The software enables users to define the dimensions of a kitchen area and fit cabinets and appliances within the space. ProKitchen is what is referred to as “2-D/3-D” software, meaning that the user can design in two dimensions (a blueprint), and then view the design in three dimensions, which simulates the appearance of the room after it is actually built. This is much more appealing to consumers, who are able to “see” their kitchen designs in a manner that was impossible, or prohibitively expensive, before 3-D design software became available.

9. 20-20 Technologies (“20-20”) develops, markets, and licenses a kitchen design software program with similar features, called “20-20 Design.” On its Internet website 20-20 claims to be “the world’s leading provider of computer-aided design, sales software and manufacturing for the interior design industry.” 20-20 is a public company with over 500 employees in 14 countries.¹ When Real View evaluated the kitchen design software market before beginning software development it identified 20-20 Design as the dominant product in that market. For example, we learned that both The Home Depot and Lowes (two of the largest kitchen vendors in the United States) use 20-20 Design in their kitchen sales departments.

¹ <http://www.2020technologies.com/frnPrimaryContent.aspx?id=1948&LangType=1033>

Because 20-20 Design is such a large factor in the marketplace, many of our design and pricing decisions have been determined by competition with 20-20 Design.

10. An analogy would be if a company decided to enter the computerized tax self-preparation business – because Quicken’s TurboTax is an established product in that market, the entrant would be prudent to study TurboTax to ensure that it provided a set of features competitive with that product. In effect, this is the process that Real View went through with 20-20 Design.

11. As stated in our interrogatory responses to 20-20, in 2004 Real View downloaded a copy of the 20-20 Software from the Internet and studied it in order to understand its functionality. However, our primary source of information on 20-20 Design was approximately ten video tutorials that were available on the Internet. These videos showed the functioning of 20-20 Design in detail, with a voice-over narrative explanation. We have also seen the 20-20 product at trade shows and at kitchen designers.

12. Real View markets its software through independent representatives, and they are sometimes questioned about how our software compares with 20-20 Design. Many kitchen design professionals are familiar with 20-20 Design either because they are already using 20-20 Design, or they have seen advertising or a demonstration of the product. It is unusual for a prospective customer not ask us how our product compares with 20-20 Design. In the three years we have been actively marketing and licensing ProKitchen we have found that our competitor has been 20-20 Design over 90 percent of the time – on infrequent occasions we have encountered competition from Planit (now owed by 20-20 Technologies) and Chief Architect.

13. After 20-20 Design the “second place” competitor that Real View often encountered was a company known as “Planit Fusion,” which sold an interior design software production called “Planit.” However, 20-20 Technologies acquired this product in early 2008.

The following announcement appears on 20-20 Technologies Internet website, dated January 29, 2008: “20-20 Technologies the world leader in 3-D interior design and furniture manufacturing software, today announced an agreement has been signed . . . to acquire the Planit Fusion business Planit Fusion, formerly 20-20’s largest worldwide competitor, markets software products and services very similar to those of 20-20.”

14. Both 20-20 Design and ProKitchen use detailed information from cabinet and appliance manufacturers in their software. Both companies use the term “catalog” to describe this aspect of their products, since the manufacturers publish “catalogs,” and this is a common term in the kitchen industry. Although other design products may “look” a great deal like 20-20 Design or ProKitchen to a casual user, what the user may not realize is that most other products don't have a comprehensive database of manufacturer catalogs. A great deal effort goes into establishing relationships with cabinet manufacturers, obtaining product information from them, coding or importing that information into the software, and maintaining it as the cabinet manufacturers' catalogs change from year to year.

15. Real View has never had business dealings with 20-20 Technologies, and has never had access to the source code for the 20-20 Software.

16. During the course of this case Real View has received a description of the allegedly infringing elements ProKitchen on two occasions: when we were provided with 20-20's interrogatory responses and when we received the expert report of 20-20's software expert, Dr. Randall Davis. The interrogatory responses provided a list of 36 items that 20-20 alleged were infringing the ProKitchen software. However, the interrogatory responses did not provide any screen shots, so it was very difficult for Real View to understand exactly what 20-20 claimed was infringing. 20-20's Expert Report parallels the interrogatory responses to some extent; however it provides screen shots and is much more precise in explaining 20-20' infringement

claims. Therefore, Real View's summary judgment motion tracks the items identified in Dr. Davis's report.

17. 20-20's expert did not number the alleged similarities that form the substance of his report. Therefore, for ease of reference, I attempted to identify the similarities and number them. Accordingly, the following documents are attached to this affidavit as exhibits::

- The 20-20 Expert Report is attached as **Exhibit A.**
- The 20-20 interrogatory responses, referenced above, is attached as **Exhibit B.**
- The list of items and features that I created from the 20-20 Expert Report is attached hereto as **Exhibit C.** I was able to identify 46 similarities that form the basis of the report.
- A detailed discussion of the similarities in the 20-20 Expert Report, using screen shots to compare the user interface elements upon which 20-20's expert bases his opinions, is attached as **Exhibit D.**

18. The 46 items identified by Dr. Davis in the Expert Report fall into the following categories.

Features Standard to The Windows Graphical User Interface

19. The user interfaces of both 20-20 Design and ProKitchen have been created using the Microsoft Windows application programming interface, which creates a graphical user interface, or "GUI," for the user. As a result, both programs allow the user to use either the mouse or the keyboard to perform most functions. Both programs use drop down menus to access commands. Both programs use the button shapes and styles that are common to Windows applications (for example, the "OK," "Delete," "Save As" and "Cancel"). (Ex. D, pp. 46-49).

20. A significant part of the color scheme is determined by Windows – for example, the grey and white color scheme that characterizes many menu windows and dialog boxes, as well as the type font, is standard to Windows. The shapes and shadings of these standard buttons are determined by Windows.

21. Many of the icons that appear in both programs are standard in Windows applications – for example, the icons for new document, open file, close file, save file, print file, undo, redo, select, cut and copy are all standard windows icons. (Ex. D, p. 41).

22. The order or location of commands and icons on the screen is also determined by Windows – for example, in a vertical menu at the top of the screen it is customary in Windows software to place what is often called the “main menu” across the top of the screen, or down the left side. Less often, the menu is put on the right of screen or the bottom, but there are only four choices. In a CAD program, where the user wants as large a workspace as possible to view the design, minimizing the menus is an important aspect of software design. (Ex. D, pp. 21, 22).

23. The placement of commands is also determined by conventions in Windows. For example, the “File” command is usually on the top left of the screen and the “Edit” command to the right of “File.” The “Help” command is typically placed on the far right top of the screen, or in the right-most position on the menu. (Ex. D, p. 41).

24. Because Windows is a “menu-driven” program, it is common for menus to “cascade” open – a selection on one menu leads to a new choice of menus, and each selection on that menu in turn leads to more choices, until the options are exhausted or a function is reached and selected (or the process is canceled). A common example is “File/Print/[select] Printer/[enter] Number of Copies/Print. Thus, the user travels through five steps to print a document, using several Windows menus to reach the final command.

25. Another important aspect of Windows is the ability to display multiple “windows” or “panels” on the screen at one time. The user is able to open, minimize, reduce, resize and close panels by clicking the icons on the top right of each window. Both ProKitchen and 20-20 Design make extensive use of this feature, as do most CAD software programs.

26. As Windows has evolved many features have been added – for example, most users now expect to use a mouse that has right and left buttons, and for the software to be designed to make use of both buttons. Right mouse buttons often will provide a “context sensitive” pop-up menu or provide access to additional choices or features. Both ProKitchen and 20-20 Design make extensive use of these features.

27. Another feature that has become popular is the use of “tabs.” By using “tabs” the user can have multiple documents open at the same time, and easily switch between them. This is sometimes referred to as a “tabbed interface,” and both ProKitchen and 20-20 Design use a tabbed interface. Tabs are typically placed at the top or bottom of the respective panel. (Ex. D, pp. 5, 9, 33).

28. Other aspects of Windows that are common to both programs are scroll bars (that allow the user to use the mouse to move up/down the screen), access to the Windows file structure (folders and files), the ability to use the mouse to drag or move objects on screen, the ability to use the “mouse wheel” (in addition to the left/right mouse buttons), the ability to format text (left/right justification, bold, italics, underline, font style and font size), and a standardized Windows help system. This list is non-exhaustive – the point is that the Windows user interface contributes substantially to the interface of both ProKitchen and 20-20 Design.

29. The subject of Microsoft Windows, and the features it provides for software developers and presents to users, is very complex; there are many versions of Windows, and many aspects that I have discussed in detail here. The point, however, is that both ProKitchen

and 20-20 Design are built on Windows, and therefore many similarities that the user sees are determined by that choice.

The “Work Area” in Computer Aided Design Software

30. People use computer aided design to create computerized representations of objects. These can be as complex as a 50 story office building or as simple as a home kitchen. For the user of a CAD program, the most important part of the screen is almost always what CAD users call the “work area” - this is the blank (or lined) area of the screen (at the start of a project) where the user places walls, cabinets, appliances, doors and windows. The work area in both ProKitchen and 20-20 Design may be a purely white space on the screen, or it may be lined like graph paper, which architects used for generations before CAD became feasible. Based on the 20-20 Expert Report 20-20 does not allege that the work areas in ProKitchen and 20-20 Design are actionable similarities in this case.

Menu Commands

31. Much of the 20-20 Expert Report addresses the menu commands used in ProKitchen to operate the software program. 20-20 asserts that there are similarities in the choice of commands and the order of commands, as presented in the various menus and submenus in ProKitchen.

32. Before I discuss the menu commands themselves, I must point out that the Expert Report is frequently incorrect when it states that menus are similar. A prominent example of this is paragraph 27 of the Report, where 20-20 compares the two “main menus” of the program, and identifies similarities. In fact, the similarities described don’t exist. Here is a comparison of the two main menus, with 20-20 Design on the top, and ProKitchen on the bottom, before and after the menu commands that are dissimilar are stricken out (see Ex. D, p. 34 for the actual menus):

BEFORE (as seen on the screen of the two programs):

<i>20-20 Design</i>											
File	Edit	View	Place	Project	Design	Notes	Dimension	Render	Preferences	Windows	Help
<i>ProKitchen</i>											
File	Edit	View	Place	Settings	Measurements	Comment	Report	License	Help		

AFTER (after standard and dissimilar commands are stricken):

<i>20-20 Design</i>											
File	Edit	View	Place	Project	Design	Notes	Dimension	Render	Preferences	Windows	Help
<i>ProKitchen</i>											
File	Edit	View	Place	Settings	Measurements	Comment	Report	License	Help		

“Place” is only menu item in common in the Main Menu

(see Ex. D, p. 34 for the actual menus)

33. Apart from the standard Windows menu choices (File, Edit, View and Help) the only common term that exists in the two main menus is “Place”, which is a standard command in CAD applications (“place” the item here). “File,” “Edit,” “View” and “Help” are in their standard locations (these four menu commands are in these exact same locations in Microsoft Word). 20-20’s expert, Dr. Davis, finds similarities only by assuming that Notes and Comment are the same, and Dimensions and Measurements are the same. (He lists these as “Notes/Comments” and “Dimensions/Measurements”). 20-20’s Expert Report uses this

“notational shorthand,” as the Report calls it, throughout the Report to argue that menus are similar. The fact is, Real View has not copied any of the menus in 20-20 Design.

34. The menu commands identified by Dr. Davis are as follows (in alphabetical order):

Add	Edit	Metric
Add comment	Elevation	Move
Add line	Extrude	Non-Plan Item
Angle	Finished side	Outside
Appliances	Grid	Place
Attributes	Height	Placement Zone
Background color	Imperial feet	Plan item
Bill of Materials	Imperial inches	Right
Cabinet	Info	Rotate
Catalog	Inside	Save as Image
Center	Items	Tag
Comment	Left	Thickness
Counter top	Length	Trim
Depth	Line color	Units
Description	Measurements	User code
Dimensions		Wall
Door		Wall group
Drag		Width
		Window

35. Each of these words is either a command or is part of the menu structure that leads the user to a command. Most of these are obvious commands: “Drag” tells the software to “drag” an object across the screen. “Width” tells the software to change the width of an object. “Line color” tells the software to change the color of a line. “Cabinet” tells the software to place a cabinet into the design “Catalog” tells the software to access one of the manufacturer catalogs. “Imperial feet” tells the software to use Imperial units of measurement, as opposed to metric. With few exceptions, every one of these commands comes from the discipline of architectural planning and computer aided design, and is a term of art or a common term in those disciplines.

36. The menu commands are arranged in a hierarchy – the user selects one command, which leads to a menu of additional commands. Depending on what command the user selects at that point, a new set of commands is presented.

37. In many instances the sequence of commands is determined by the logic of a CAD software application. Windows users, and more specifically CAD users, expect to see a certain “logic” to a CAD program, just as the user of a word processor expects to see familiar commands in familiar places. For example if one wanted to put a cabinet or chair in a design, convention suggests that the user go to the “Place” command on the main menu, where the user would be presented with a choice of objects to “Place” in the design. Much of a CAD program follows similar conventions, and therefore while there are some choices as to how to organize commands, the choices are often limited by convention and logic – commands must go where users expect to find them. (see Ex. D, p. 34 for the “Place” menu).

38. As permitted by Windows, the user chooses a command by either highlighting it on the screen (by using the arrow keys) and pressing the “enter” key, or choosing the command by using the mouse to place the cursor over the command and “clicking” the mouse button. Either way, the user is, in effect, pressing “buttons” to access features of the program or instruct the computer to perform an action.

39. Although 20-20’s expert did “filter” out some of the common Windows commands (file/print/save, for example), he ignored the fact that most of the commands he left in his report are just as common to computer aided design software as the examples above are to Windows software. For example, it would be hard to imagine a CAD program that didn’t use commands such as “center,” “left,” “right,” “move” and “rotate.”

40. In many instances commands describe important features in the software. For example, when a user is working on a plan, the “save” command will save the plan in the

ProKitchen data format. However, sometimes a user would prefer to save the plan as a graphics file that can be printed quickly and easily. The command “save as image” (which is specifically referenced in the 20-20 Expert Report) permits the user to do this. In addition, it is an extremely common software command - – a Google search of “save as image” results in over 170,000 “hits”.

41. Another example is the use of the term “attributes” in both programs. (Ex. D, p. 35). It would be difficult to think of a term more common to design software than “attributes,” which enables the user to change the “attributes” of an object, or even attributes of the software itself.

42. While it would be overly laborious to discuss each and every one of the commands referenced by Dr. Davis in the 20-20 Expert Report, almost all of them are common to Windows or CAD design.

Use of Sub-Windows (or “Panels”) on the Opening Screen

43. 20-20’s Expert Report points to the use of “sub-windows”, or what Real View sometimes calls “panels,” on the left of the screen, and asserts that this is a similarity. (Ex. D, pp. 2, 3).

44. The panels that Dr. Davis references are “windows” within the meaning of the Windows user interface. In other words, each contains separate information, and they can be manipulated – opened, closed, resized. In 20-20 Design, they can be moved to different places on the screen.

45. The panels contain different information in the two programs. (Ex. D, p. 2). This table also explains this:

20-20 Design	ProKitchen
<i>No comparable feature in 20-20 Design</i>	List of designs that have been created by user
Context sensitive information, based on user actions, including images of products	ProKitchen does not have a context sensitive sub-menu; ProKitchen is limited to showing images of products and styles
Location of object on grid in a context sensitive manner	ProKitchen provides the same information, but uses different labels
List of products (cabinet, appliance) top half, manufacturer data bottom half. This information is presented in a customized format that doesn't resemble the Windows file system.	Windows-like file system directory of folders containing products and a directory of product sub-folders. This bears no resemblance to the presentation of information in 20-20 Design.

46. In addition, given the number of products in the databases of both programs (up to 30,000 in one catalog, for example) both programs have a “search field” that allows the user to search for a product by SKU. (Ex. D, p. 2, 3). Both products use the common feature known as “incremental find”, in which matches are located and presented to the user as the user types the search. However, ProKitchen has the additional ability to find objects based on a generic description, or by a combination of any characters in the SKU. Moreover, the search field is not a separate window – it is tied to the catalog window (the last window described in the table above).

47. The information contained in each of the panels in ProKitchen is essential to the application: users must be able to use the file structure to locate products; users must be able to see a preview of the product before they select and place it; users must be able to see the precise location of a product as they place it within a design; and, users must have the ability to select a product from the catalogs using a search field.

48. As illustrated in Exhibit D, there is a great deal of flexibility with each of these sub-windows – they can be selectively minimized, moved to other places on the screen (in 20-20 Design), and ultimately closed altogether, so that the work area is maximized. (Ex. D, pp. 18-22).

49. This concept – having sub-windows that show product/folder directories, object location and an image of the product selected before it is placed on the work area is common to many CAD programs, and I have provided numerous examples of this in Exhibit D, pages 4 - 17. In my opinion, this is one of a very few ways of presenting this information to users, and is the easiest and most efficient way to do so, as evidenced by the fact that so many CAD programs take exactly this approach.

The “Split Screen” Showing “Plan” and “Elevation” Views

50. In architectural and design terms, a “plan view” refers to the view of a room looking straight down, as if the viewer were hovering above a room with no ceiling or roof to obstruct the view. This is sometimes called a “top view.” An “elevation view” refers to the perspective as if one were looking at an area “straight on” standing in front of it. As people walk around their homes, if they turn and face a wall they are seeing a room from the perspective of an “elevation” view.

51. The 20-20 Expert Report suggests that when one opens either ProKitchen or 20-20 Design for the first time one sees a “split view” - that is, one half of the screen shows one view, the other half the other view. This is not the case – in both programs this is an option that the user must elect by entering or clicking menu commands.

52. As shown in Exhibit D on pages 23-32, a “split view,” or what is sometimes called a “multiview” by architects and designers, is a common concept in architecture, and is available in many other programs. It is also common, in design software, for all other views to

change when the data in one view is changed. This is analogous to a multi-level spreadsheet, where a “cell” in one level is changed, the result “ripples through” the other levels.

53. As further shown in Exhibit D, Real View implements this feature differently than 20-20 Design – the ProKitchen software allows the user to see up to four panels or windows at a time, while 20-20 Design limits the user to two views. (Ex. D, p. 31).

54. One of the software programs that Dr. Davis reviews and references in the 20-20 Expert Report, the “Configura” program, provides an example of a two view “multiview.” (Ex. D, p. 27).

55. In my opinion, this feature is important to the functionality of ProKitchen. If a prospective customer asks, “do you allow planners to see the plan view and elevation view at the same time?,” Real View needs to be able to say “yes”.

56. The fact that a change in one view is reflected in other open views is a common Windows feature, and is common to CAD software. Thus, if the user changes the location of an object in the plan view, that change is automatically reflected in the elevation view.

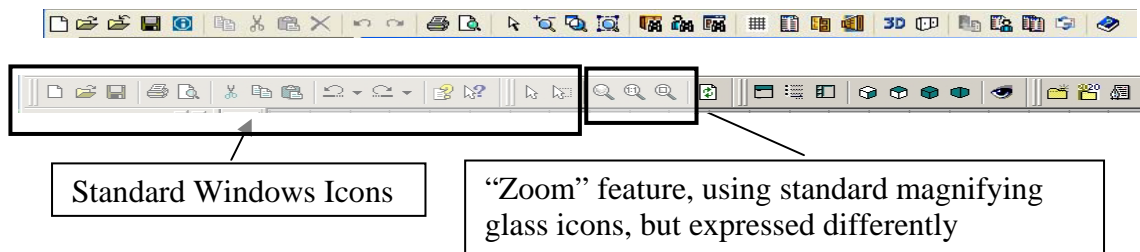
The Use of Icons in the Two Programs

57. Much of the 20-20 Expert Report addresses menu commands. However, 20-20’s expert also makes observations regarding similarities in the icons in toolbars used in the two programs.

58. All of these menus are displayed and discussed in detail in Exhibit D. As shown there, apart from the standard Windows icons, the icons used by Real View are different from those used by 20-20 Design in every instance. (Ex. D, pp. 41, 45). And, once again, 20-20’s expert asserts that icons are similar when it is clear that they are not. Another example is drawn from paragraph 30 of the 20-20 Expert Report, where Dr. Davis states that there are “striking

similarities” in the two toolbars that appear under the main menus. This clearly is not the case.

(Ex. D, p. 41). Here is the graphic in Dr. Davis’ Report:



59. It is obvious that the icons are dissimilar - apart from the standard Windows icons and the industry standard magnifying glass icons (an industry standard icon for the “zoom” feature, but expressed slightly differently in every CAD program), there is no similarity at all. (Ex. D, p. 41).

60. In many cases a certain “idea” is used to represent a feature. For example, various magnifying glasses are used to represent certain “zoom” features. Many programs use the “idea” of a magnifying glass, but a different artistic implementation of these objects. The ProKitchen software follows this example – it uses magnifying glasses for the function, but a different design than 20-20 Design uses. (Ex. D, p. 42).

61. All of the icons in ProKitchen were created independently – none was copied from 20-20 Design.

Functionalities and Features in the 20-20 Expert Report

62. Dr. Davis references a number of items that, in my opinion, are functionalities of the software. Many of these functionalities are present in other CAD programs. These are what the CAD user community thinks of as “features.” A user, or prospective user, might ask:

- “Can I rotate a wall using the mouse”?
- If I update one view, is it reflected in other views?
- Does the software allow me to create “construction lines”? (An invisible or “virtual” line, as opposed to a visible wall)?
- What are the different ways I can place an item on the plan?
- Does the software have “collision detection” - that is, it prevents the user from placing two objects in the same space?
- Does the software permit me to create comments that are “attached” to objects and, if so, can I number the comments?
- Does the software allow me to search for a product (say, a cabinet) using a Google-like search field?
- Does the search function use “incremental search”, where possible search results are shown as the user types letters, and therefore I may not have to complete the full search?
- Does the software have a tabbed interface and if so, can the tabs be renamed?

63. In my opinion each of these items (to which ProKitchen could answer “yes”), is a feature of the program. It reflects an underlying functionality of the software – something the software permits the user to “do.” And, each of these features is something that some sub-set of users wants his or her software to perform.

The Use of “Placement Zone” in Both Software Programs

64. One of the similarities in the 20-20 Expert Report relates to the idea of a “placement zone.” The term “placement zone” describes a feature of the 20-20 Design software that creates a “zone” next to a wall in a plan view. Objects that are moved into this “zone” have

constraints on their “behavior” – specifically, they are forced up against the wall, and can only be moved on the two-dimensional plane represented by the wall. (Ex. D, p. 52).

65. 20-20 Design and ProKitchen display the “zone” differently. In 20-20 Design the user may show the zone with different style lines (solid, dashed, different colors). Or, the zone may be shown by means of a solid or transparent color, of the user’s choice.

66. In ProKitchen, the placement zone performs the same function – that is, objects placed in the zone are forced to behave as described above; however, in ProKitchen the “zone” is shown only by means of a light solid line. (Ex. D, p. 52).

67. Since gives the user so many ways to “visualize” the placement zone, 20-20 leaves ProKitchen no practical options for implementing this feature differently – if ProKitchen uses a line to outline the “zone” (as it does), 20-20 can complain (as it has) that it “copies” the 20-20 Design format. However, if ProKitchen uses a different colored line, or a solid or transparent color, 20-20 can make the same complaint, since 20-20 Design is able to illustrate the “zone” in the same manner. In effect, 20-20 has “taken all options” for expressing this feature. ProKitchen has chosen only one of these options to express this idea.

68. This is, in my opinion, an example of the market for unpatented “ideas” working efficiently - 20-20 implemented this feature, and their customers liked it; some of their customers expressed this to Real View, and Real View implemented the feature, which is very popular with users. “Placement zones” make it easier for users to use a kitchen design CAD program.

Because it appears that 20-20 was the first company to present this feature to the kitchen CAD market, Real View adopted the name that 20-20 gave to the feature. Now, if a customer or user asks us “do you have placement zones, like 20-20 Design does,” we can answer, “yes.” To the best of our knowledge, we copied an unpatented functionality that may have been “invented” by

20-20, but which is now part of the set of features that CAD developers can chose to include in their products.

The “Legend” Stamp

69. The 20-20 Expert Report shows various “legends” which contain legal boilerplate, telling customers that dimensions and sizes are subject to verification on the job site, and that the design should not be copied until it is paid for. The text that Dr. Davis focuses on is standard “boilerplate” for architectural designs. I have provided numerous examples of similar or identical “legends” that are available on the Internet. (Ex. D, p. 71-75). This text is provided by the user, and can be changed at will. The default text has been changed in ProKitchen 3.0, which was released in January 2008. (Ex. D, p. 76).

Other Allegations of Wrongdoing Made by 20-20 Against Real View

70. In 20-20’s Interrogatory responses it has accused Real View of various illegal actions, apart from the claims of copyright infringement. Specifically -

- 20-20 Technologies Interrogatory Response No. 15, Ex. B: 20-20 accuses Real View of telling customers and potential customers that “ProKitchen is the same as 20-20 Design” and that it is a “cheaper version of 20-20 Design.” This is a false allegation; Real View has never instructed anyone associated with the company to make such a statement, and to my knowledge no statement of this sort has ever been made.
- 20-20 Technologies Interrogatory Response No. 17, Ex. B: 20-20 Technologies accuses Real View of copying its pricing structure, license exchange program, ongoing improvements (the example 20-20 gives is adding an “updated bath fixtures catalog”), listing experience with 20-20 Design as a factor in recruiting employees to Real View, and making illegal use of 20-20’s

trademark by using 20-20's name in the hiring ad. I believe that this is part of normal competition (pricing, features, recruiting), and 20-20 Technologies has no grounds to make a legal complaint concerning these issues. In fact, Real View has never interviewed or hired an employee of 20-20.

- 20-20 Technologies Interrogatory Response No. 19, Ex. B: In this interrogatory 20-20 Technologies accuses Real View of interfering with manufacturers by "minimizing training requirements as the basis for inducing those manufacturers to enter into a business relationship with Real View." This is untrue – any "training" that Real View has provided is based on Real View's honest perception on how much training is needed to learn the ProKitchen software. We have never set or modified training requirements for ProKitchen in order to harm 20-20 Technologies.

Signed under the pains and penalties of perjury this 3rd day of June, 2009.

/s/ Boris Zeldin
Boris Zeldin

Certificate of Service

I hereby certify that on June 3, 2009 I electronically filed the foregoing with the Clerk for the United States District Court for the District of Massachusetts by using the CM/ECF system. I certify that all participants in the case are registered CM/ECT users and that service will be accomplished by the CM/ECT system.

/s/ Lee T. Gesmer
Lee T. Gesmer